

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOHN NELSON

PLAINTIFF

V.

CIVIL ACTION NO. 1:20-cv-73-HSO-JCG

**THE CITY OF BAY ST. LOUIS,
LES FILLINGAME, MIKE FAVRE,
GARY PONTHEUX, AND PAT TICE**

DEFENDANTS

NOTICE OF REMOVAL

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION**

Kendra Necaise, Clerk
Hancock County Circuit Court
152 Main Street, Suite B
Bay St Louis, Mississippi 39520

HINDS COUNTY CIRCUIT CLERK

Joseph R. Tasmuta (MS Bar No. 105220)
Russell S. Gill (MS Bar No. 4840)
Russell S. Gill, P.L.L.C
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ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that Defendants, the City of Bay St. Louis, Les Fillingame, Mike Favre, Gary Ponthieux, and Pat Tice ("Defendants"), in the above styled and numbered case, has removed this civil action entitled *John Nelson v. The City of Bay St. Louis, Les Fillingame, Mike Favre, Gary Ponthieux, and Pat Tice* (on the docket of the Circuit Court of Hancock County, Mississippi, Second Circuit Court District and bearing civil action number

23CI1:19-cv-00219-LPD), to the United States District Court for the Southern District of Mississippi, Southern Division, by filing this “Notice of Removal.”

Pursuant to said removal, the Circuit Court of Hancock County, Mississippi, should proceed no further with this matter pursuant to 28 U.S.C. § 1441, as amended.

Defendants appear specially and for the sole and only purpose of effecting removal to this Court, state the following as grounds for removal:

1. This “Notice of Removal” has been filed within the time period prescribed in 28 U.S.C. § 1446(b). Venue is proper in the Southern Division pursuant to 28 U.S.C. § 1441 (a) and § 1446(a).

2. Defendants in the previously identified civil action now pending in Circuit Court of Hancock County, Mississippi, Second Circuit Court District. Said suit is an action by Plaintiff to recover certain sums of money and other relief from Defendant. As set forth in the Complaint, Plaintiff alleges violations of the Fair Labor Standards Act (“FLSA”).

3. Said suit was instituted on September 17, 2019, which was the date on which the Complaint was filed. Defendants’ legal counsel accepted service of the Complaint on or about February 4, 2020. Defendants file and present this “Notice of Removal” within thirty (30) days after receipt by it, through service, of a copy of the Complaint, setting forth the claim for relief upon which such action or proceeding is based, as required by 28 U.S.C. § 1446, as amended.

4. A copy of all pleadings and filings served on Defendants is attached hereto as Exhibit A.

5. As grounds for removal, Defendants state that this Court has original jurisdiction over this matter insofar as it arises under the laws of the United States, in particular, the FLSA. Accordingly, Plaintiff’s allegations in the Complaint state a “claim or right arising under the . . .

laws of the United States,” which is properly removed to this Court. 28 U.S.C. § 1441(b). This Action, therefore, could have been filed originally in this Court pursuant to 28 U.S.C. § 1331, as this Court has federal question jurisdiction, and is properly removed to this Court. 28 U.S.C. § 1441(a). In addition, this Court has supplemental jurisdiction over the remaining claim pursuant to 28 U.S.C. § 1367.

6. As further grounds for removal, Defendants state that the Plaintiff represents that he is a citizen of the State of Mississippi in his Complaint.

7. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Defendants’ right to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the putative claims; (8) failure to join an indispensable party(ies); or (9) any other pertinent defense available under Miss. R. Civ. P. 12 or Fed. R. Civ. P. 12, any state or federal statute or otherwise.

8. For the foregoing reasons, this court has jurisdiction pursuant to 28 U.S.C. §§1331 and 28 U.S.C. §1367.

9. Simultaneously with the filing of the “Notice of Removal,” Defendants have given the Plaintiff, Johns Nelson, through his counsel, written notice of the removal of this action and is filing a copy of this “Notice of Removal” with the clerk of the Circuit Court of Hancock County, Mississippi, Second Judicial District.

WHEREFORE, the Defendants, the City of Bay St. Louis, Les Fillingame, Mike Favre, Gary Ponthieux, and Pat Tice, hereby remove this action from the Circuit Court of Hancock

County, Second Circuit Court District of Mississippi to the United States District court for the Southern District of Mississippi, Southern Division.

Respectfully submitted, this the 24th day of February, 2020.

**THE CITY OF BAY ST. LOUIS,
LES FILLINGAME, MIKE FAVRE,
GARY PONTHEUX, AND PAT TICE**
Defendants

BY: 
W. Mackin Johnson (MS BAR No.104285)

ITS ATTORNEY

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, W. Mackin Johnson, attorney for the Defendant, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all registered attorneys listed:

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ATTORNEYS FOR PLAINTIFF

This the 24th day of February, 2020.



W. Mackin Johnson